

November 1, 2001

To: Interested Parties

From: Wayne Walker
Branch Chief, State HOME Program

Re: Questions and Answers from 2001 State HOME NOFA Training Workshops

Enclosed please find the Questions and Answers from this year's HOME NOFA Training Workshops.

Remember that your application must be received by the State by close of business on November 21, 2001. Please call your HOME representative ASAP if you have any questions.

Please submit one application and an additional copy of pages 1-7, i.e. the "HOME PROGRAM APPLICATION", and a copy of the governing board resolution.

**2001 HOME NOFA
Questions and Answers from September 6, 11, and 13 workshops**

Administrative Subcontractors

Are city and county applicants (“State Recipients”) required to go through a procurement process prior to naming an administrative subcontractor in the application?

It is not required, but we highly recommend doing so, because if you wait until after submitting the application, and the procurement process leads to selection of a different administrative subcontractor, that entity must have experience at least equal to the one named in the application. Remember that whenever you do your procurement process, you must follow the RFP/RFQ methodology. Again, whenever you conduct the process, if you only get one bid, you must request sole source approval from the State prior to awarding the contract. It should take the State no more than a week to approve such a request, but you can expedite the process by fax’ing the entire package (the RFP/RFQ, the methodology for informing likely bidders, verbally advising your HOME representative of your need for quick approval, and advising the representative that you have fax’d in the request.)

Note: Federal procurement regulations require procurement in a manner providing full and open competition. State Recipients must follow 24 CFR 92.356 and 24 CFR 5.36. Make sure that your procurement process avoids noncompetitive pricing practices, noncompetitive retainers, or any arbitrary action in the procurement process.

Is there any consequence if our administrative subcontractor has worked in another city and missed milestones in that city’s contract?

No

Is a procurement process required before a CHDO chooses an administrative subcontractor?

No, but the State strongly recommends that the CHDO conduct a procurement process to avoid even the appearance of a conflict of interest.

I have been administering a HOME program for several years, but have not had experience in the exact same activity as I will be applying for. Do I really need to hire an administrative subcontractor?

Capability is measured by several methods. In one method, the applicant or the Administrative Subcontractor must have recent experience of the exact type specified in the individual activity Attachments (Attachments 4 – 14). If an applicant doesn’t have the specified experience, it will be rated lower than an applicant which has the specified experience. Applicants without the specified experience, who hire an experienced Administrative Subcontractor, receive rating credit as if they themselves had the experience. Remember that Administrative Subcontractors must implement all administrative components of a program, or for a project, must act in a pivotal or central role, for their experience to

count. Each applicant needs to decide for themselves whether it makes sense to hire an administrative subcontractor.

The State also evaluates the experience of Developers and Owners for project applications, Attachments 10 – 14. An Administrative Subcontractor's experience cannot substitute for their experience.

Application Funding Limits

The NOFA is unclear on the maximum application amounts for Owner-occupied rehabilitation.

Use the limits for "Homeownership" programs, which is \$500,000, unless you are a qualified applicant, in which case you are eligible for \$600,000. If you are applying for both an owner-occupied rehabilitation program and a first-time homebuyer program, the limit is still \$500,000 for both activities combined, unless you are a qualified applicant, in which case it is \$600,000.

Requirements applicable to all Applications

Are the limits listed at Appendix C purchase price or appraised value limits? How do I request an increase of these limits?

For programs financing acquisition only, these are sales price limits. For programs financing acquisition and rehabilitation (or owner-occupied, or rental rehabilitation), these are after-rehab value limits. Cities and counties may request an increase in these limits by submitting actual sales price information for comparable properties to your HOME representative. As the request must then be forwarded to HUD, the whole process can take two to three months.

May HOME funds be used as grants or as interest buy-downs?

No. All HOME assistance must be in the form of loans, with or without interest, which must be repaid after a fixed term.

May I use HOME funds for construction financing only, with some or all of the funds repaid at permanent loan closing to my Program Income account?

No. All HOME funds setup and drawn for a specific project must be used as permanent financing for that project. If some of the funds are not needed for permanent financing, they must be returned to the State. Depending on the type of activity, these funds may be available to you to make additional loans, or they may be disencumbered and no longer available for your use.

I know that relocation payments are required for some low-income tenants. Are similar payments owed to those who are not low-income?

Yes, if relocation payments are necessary because of HOME funded activities, relocation payments are owed to both low-income and higher income tenants. Low income tenants generally receive higher payments.

Can we use below market priced land as leverage?

No, leverage is strictly the other permanent financing that you have for the project. But you can count property donations as match (see the next question).

How do you ascertain the value of match for a property donation? Is it the value of a building that is donated or the discounted price?

For property acquired with non-federal resources, it is the value of the building, less any debt burden, liens, or encumbrances. HOME applicants, recipients, and investors cannot donate eligible match via property donations.

Requirements applicable to all “Program” applications (Attachments 4 – 9)

Are loan servicing fees an eligible soft cost, and thus eligible to be paid with HOME funds?

Loan servicing costs which are incurred during the first thirty-nine (39) months (the HOME expenditure deadline) following the award letter date may be paid with Administration or Activity Delivery funds. Prepayment of loan servicing costs, for activities which will occur after the 39 month period, are not eligible. Loan servicing costs may not be charged to the borrower, or added to the loan amount. Note: this is a correction of the answer given in Sacramento.

I know that the period of affordability (5, 10, or 15 years) depends on the amount of funds per unit. Is this the total amount or the HOME amount per unit?

The amount of HOME funds per HOME assisted unit determines the period of affordability.

If my application is funded, are my program guidelines considered approved? Do I have to resubmit them?

If your application is funded, check Attachment C of the Standard Agreement to see if the State has required any changes to the Program Guidelines. If there are no required changes, your program guidelines are considered approved. Subject to meeting other conditions, you may begin your program. If changes are required, submit a draft of the modified portion only. Once these are approved by the State, resubmit an entire set of program guidelines for the State’s file. Although guidelines are considered approved at this point, the State reserves the right to require or recommend changes at a later date, e.g. at monitoring or as conditions warrant.

Do we indicate the total number of units or the HOME units in the table on page 6-1 and 8-1?

The total number of units.

First Time Homebuyer - specifics

May a First Time Homebuyer (FTHB) program assist a household which owns their own dilapidated mobile home and the land, to remove the mobile home and replace it with a new unit?

Yes, provided that the mobile home being replaced is not on a permanent foundation, and the replacement mobile home is on a permanent foundation. Also, it must not be possible to bring the mobile home being replaced into compliance with state, local, or model building codes for less than the cost of replacing it with another mobile home. The replacement unit should be comparable in amenities, number of bedrooms and bathrooms, and size compared to the mobilehome being replaced. Larger units may be acceptable if family circumstances warrant.

May a FTHB loan be repaid during the period of affordability?

Yes, as long as the full amount of principal and interest is repaid to the local HOME account. If the entire period of affordability has not been completed, some of the funds will be considered Program Income and some will be considered Recaptured Funds. Ten percent (10%) of Program Income may be used for administration costs. However, if the property is a multi unit building (duplex, triplex, or fourplex), the property must continue to comply with all HOME requirements throughout the period of affordability (occupant, rent and property standards), and be regularly monitored by the State Recipient, even if the loan is repaid.

Is a displaced homemaker eligible for the first time homebuyer exception specified in the State Regulations if they receive proceeds from the sale of their home?

Yes, as long as the income from the proceeds is calculated in determining their income. See the definition of first time homebuyer in the State regulations under Section 8201 (k).

Do you qualify as a FTHB if you own real estate but it is not your primary residence (e.g. a rental property)?

No.

Can you use a HOME funded FTHB program to acquire a duplex or triplex, live in one of the units, and rent out the other units?

Yes, but this is very complicated and requires close consultation with your HOME representative to meet all program requirements. We do not recommend making this an eligible use of HOME funds. The four most important requirements are: a) the buyer must qualify as a low income First Time Homebuyer, including income from the rental units, b) the costs must be allocated between the rental and homeownership units, c) the rental units must meet HOME rental requirements, d) if the property is sold, the rental units must remain affordable in the HOME program for the required period of affordability, regardless of whether the loan is repaid or not.

The State HOME program requires that the unit being purchased be owner occupied, or if it has been tenant-occupied, that it have been vacant for four months prior to the purchase offer date. What documentation is required to prove that the property has in fact been vacant?

The State requires that the State Recipient have some reasonable form of documentation. At a minimum, the seller should sign a self-certification. Remember that the State Recipient is ultimately responsible for providing relocation assistance if the owner has in fact rented the unit within this four month timeframe. Thus, we recommend, but do not require, that better documentation be collected, e.g. utility payments normally paid by tenants (e.g. electricity or gas), showing that the owner paid the bills during the minimum four month period.

Who is responsible for paying relocation costs? How can this be made clear to all parties?

HUD and the State hold the State Recipient ultimately responsible for relocation costs. The State Recipient may wish to pass this obligation onto the seller. The best way to make this obligation clear to sellers is to require a self-certification from the seller stating that if there is any claim for relocation assistance from a tenant who actually occupied the property within that four month timeframe, that the seller is solely responsible for making all required payments.

Requirements applicable to Owner Occupied Rehabilitation applications (Attachment 6)

May an Owner Occupied Rehabilitation loan be repaid? Is the repayment considered Program Income?

There is no minimum period of affordability for owner occupied rehabilitation, so all repayments from Owner-Occupied Rehabilitation loans are considered Program Income.

Housing Elements

Is housing element compliance required for CHDOs?

No, but if a CHDO is applying for a program (Attachment 5 or 8 only), the need for the activity as documented in the Housing Element is a rating factor.

Is housing element compliance required for new cities?

State law allows time for a new city to prepare a housing element. During this transition period, new cities will receive full credit for any rating criteria which uses the Housing Element.

Our housing element is 9 years old. Last year we conducted mini surveys indicating numbers different than those in the housing element. Can we use those numbers where the application asks for number of units needing rehab or replacement?

If you amend your housing element to include those numbers and get it approved by the State's Housing Policy Development Division (HPD), you can. Realistically, it is too late for this funding cycle.

Pre Application Review of Documents

May I submit my application or a part of it, for advance State review?

The State will review one or two documents per applicant to ensure that the documents meet our requirements. Examples include a permanent financing commitment, a specific element of a program guideline, a letter from a City regarding the status of planning approvals. We will not review entire applications, entire sets of guidelines, or entire financial pro-forma documents. Contact your representative as soon as possible if you wish to take advantage of this service.

Rating and Ranking – Capability

How do you determine whether I can count my experience in a particular year?

For Attachments 2 and 3, count your HOME or CDBG contract using the contract number. For example, count your 98-HOME contract in the box labeled "1998". For program attachments that request specific experience information (Attachments 4 – 9), count the specific type of units completed in that year. For example, if escrow closed on 18 first time homebuyer loans in calendar year 1998, count them in 1998. For project attachments which request experience information (Attachments 10-14), list all projects with a construction completion date after January 1, 1997, and on or before November 21, 2001. For the charts which request experience on projects owned, e.g. the chart at the top of page 10-3, list any project, regardless of when it was completed, that was owned at any time after January 1, 1997.

What experience is required for Attachments 4 – 14?

Experience only counts for Attachments 4 – 14 if your experience meets the specific requirement of each Attachment. For example, experience developing a single family homeownership subdivision does not count in Attachment 10. Attachment 10 requires experience with "similar subsidized rental new construction projects".

May I use experience from market rate housing for the activity specific experience? For example, if I have helped homebuyers with conventional loans, would that count?

No, market rate housing does not count. There are several differences between market rate housing and HOME assisted housing. Market rate housing has no period of affordability, no federal overlay requirements, no income qualification requirements, no sales price limitations, etc. Make sure that the "Funding Source (Name of Program)" information is a widely known program, and if not, explain the nature of the program in a few words, so that the State can clearly see that this is an affordable housing program.

At Attachment 2 and 3, a CHDO or an Administrative Subcontractor can claim experience when it acted as an Administrative Subcontractor for another HOME or CDBG project. To claim this, however, a letter from the actual Contractor, describing the Administrative Subcontractor's responsibilities, is required. This is too hard to get; can we substitute our Agreement with the Contractor?

No. Where the Application forms clearly require a letter, a letter is the only document we can count. A scope of work in a contract sometimes does not accurately reflect the work that was actually done. Note that for some forms of experience, documentation other than the letter is also required. Study the requirements of the specific pages carefully.

Rating and Ranking – Need Scores

If the 1990 census data, used for HOME need scores, is out of date, may we use a market study?

No. We use census data so we have a consistent and fair method for comparing applications.

Rehabilitation Applications – Specifics

If you assist a homeowner with weatherization, are you permitted to assist them with something else a couple of years later?

No. Once a unit is rehabilitated with HOME funds, it cannot receive HOME assistance again. HOME funded rehabilitation must result in the unit meeting local codes when the rehabilitation is completed.

Can we rehabilitate owner-occupied mobile homes on rented land or on a space in a mobilehome park?

Yes.

Does the HOME Program require that the mobile home to be rehabilitated be on a permanent foundation?

No. A mobilehome does not need to be on a permanent foundation to be rehabilitated with HOME funds.

Can HOME funds be used to demolish a dilapidated house and then put up a new unit?

Yes, provided that the cost of replacing the unit is comparable to the cost of rehabilitating the existing house, and provided that the replacement unit is comparable in amenities, number of bedrooms and bathrooms, and size compared to the house being replaced. Larger units may be acceptable if family circumstances warrant.

HOME funds may not be used to assist a unit that has a projected after-rehabilitation value higher than the limits listed in Appendix C of the HOME Application Training Manual. What are

the qualifications required for conducting these valuations? Is it OK if we calculate the projected value ourselves?

Yes, as long as you have a methodology for developing the appraisal that is consistent with industry standard methods (e.g. recent comparables adjusted for timeliness and unique characteristics; income approach for rentals; replacement cost less depreciation).

Are permit fees considered hard costs, and thus eligible to be added to the HOME loan amount?

Yes. However, you may not charge borrowers or add to the loan amount for any activities which are normally performed by a "full service" housing rehabilitation program. That is, there may be no charges for inspections, loan packaging, underwriting, documentation preparation, etc. Remember that HOME funded rehabilitation programs may receive up to 14.5% for Administration and Activity Delivery costs.

When you mention that HOME funds may be used for grants for relocation expenses incurred through owner-occupied rehabilitation, does that mean temporary relocation?

Yes

How do you deal with mixed income occupancies?

Make sure that the project has at least the minimum number of HOME units. Consult the Application Training Manual and the relevant CPD Notices to make this determination.

How do you allocate costs of a rehab in a mixed-use building, with apartments above commercial?

Generally, the developer will allocate costs to a) the commercial use, b) the residential use, and c) the entire building. The costs attributed to the entire building would then be pro-rated by square footage. Make sure there are enough HOME units to support the amount of HOME funds used.

Can HOME funds be used for site improvements in a mobilehome park?

HOME funds may only be used for onsite improvements; offsite improvements are generally not eligible. If the project consists of the acquisition and rehabilitation of the entire mobilehome park, park utilities are eligible. However, if HOME assistance is used only to rehabilitate a specific mobilehome, occupying a rented space, mobilehome park improvements are not eligible because they are not on the rented space - they are offsite.

Rental Projects – Selection of Developer

What process is required for the State Recipient to select the project developer?

The State Recipient is required to go through a public process to select the developer, but this can be just what is normally required for any Council or Board action. No RFP or RFQ process is required.

Rental Projects – Specifics

How do I determine the applicable subsidy and rent limits for SROs and group homes?

Subsidy limits:

SRO: Use the 0-bedroom limit at Appendix B of the Application Training Manual.

Group Homes: Use the applicable limit in Attachment B of the Application Training Manual, based on the number of bedrooms in the unit not occupied by staff. Consult with the State for group homes exceeding 4 bedrooms.

Rent limits:

SRO: If the SRO unit has both cooking and sanitary facilities, use the “Efficiency” limit at Appendix D of the Application Training Manual. If the SRO lacks either cooking or sanitary facilities, use 75% of the Efficiency limit.

Group Homes: Use the applicable limit in Attachment D, based on the number of bedrooms in the unit. Consult with the State for group homes exceeding 6 bedrooms.

The NOFA requires that if the applicant, developer, or owner is proposing to use its own funds or funds of a non-institutional lender, the application must provide documentation that the funds are actually available. What documentation is acceptable?

The required documentation depends on the item being contributed. Cash requires a bank statement or similar document. Land value requires an appraisal. A loan from a private party, not in the business of providing loans, requires a bank statement or similar document showing that funds are available. The Department will review any proposed documentation in advance of the application, if a reasonable amount of time is provided for such a review.

May I claim an existing loan as leverage?

Yes, but only if the remaining term is for at least the required period of affordability.

Can a project be changed after submittal of the application?

The site may not change after the application is submitted. If site control is lost, the funds will be disencumbered and the Agreement cancelled. Otherwise, a project should not change from that described in the application. The project is rated and ranked based on the structure and finances of the project as described in the application. It is unfair to unsuccessful applicants to apply for a project configured one way and then to change it later. Having said that, there are some circumstances which require relatively

small changes in the proposal; the State will consider such changes on a case-by-case basis. If the State determines that the applicant knew or should have known at the time of the application that the change would be needed later, the State – at its sole discretion - will not approve the change.

May I purchase land prior to completing my NEPA environmental review and then use HOME funds to reimburse me for it?

No. NEPA rules prohibit the use of HOME funds for payment (or reimbursement) of any costs incurred prior to the completion of the environmental review process. However, you may execute a purchase option agreement, provided that the option is contingent upon completion of the NEPA environmental review process.

May we submit an application with two parties as co-developers? How do we complete the Application sections requesting experience?

It is acceptable to name two parties as co-developers, but to be fair to other applicants, only the experience of one of the parties may be listed in the application. Remember that there are special rules regarding the participation of CHDOs in co-development situations. Consult with HOME CHDO representatives to make sure you fully understand these requirements.

Rental Projects – Fiscal Integrity and Other Issues

How is the replacement reserve calculated?

For CHDOs, the replacement reserve must be at least 0.6% of unit construction cost. This is the total cost of structures, general requirements, contractor overhead & profit, contingency, and furnishings times 0.6% in new construction projects. In rehab projects, it is the total cost of the units (less land) and the rehabilitation times 0.6%. State Recipients must require reasonable reserves. The State recommends using the .6% of unit construction cost formula. State Recipients must explain any deviation from this formula.

What is the guideline for property management fee costs?

\$25-40 per unit per month or 5-7% of gross rental income.

Does the State have guidelines for utility costs?

No, not at this time.

When should the NEPA process begin?

HUD recommends that the NEPA process begin once the site is identified. The NEPA process must be completed before any choice limiting action such as “taking a physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair or construction activities.” However, performing activities listed in the

NEPA regulations 24 CFR Section 58.34 or 58.35(b) are permissible prior to conducting choice limiting actions.

What happens if my project does not get the tax credits I represented in my application?

The State Regulations allow 12 months to obtain all permanent financing. For applications which proposed the use of low-income housing tax credits, 17 months are allowed to obtain the necessary tax credits. The 17 month timeframe may allow up to three applications to TCAC/CDLC, assuming two rounds per annum. The State will disencumber HOME funds from projects not receiving necessary tax credits by the 17-month deadline.

What forms of site control evidence must be effective 180 days after the award date?

The two forms are: 1) an option to purchase or lease, and 2) a disposition and development agreement. A “land sales contract or other enforceable agreement for the acquisition of the property” need not be effective for 180 days after the award date. **Do not automatically assume that your document will be considered to meet this test and thus avoid the 180 day requirement.** We strongly urge you to consult with the State to determine if your document qualifies. Generally, to avoid the 180 day requirement, the agreement must have minimal conditions precedent to the purchase. We may, at our sole discretion, consider this document to be an option, and require a 180 day effective period if the agreement is similar to an option, in that it is conditioned upon obtaining financing commitments, local land use approvals, clearance of on site environmental damage, etc.

The application requests a letter regarding the status of local government approvals. May I use the letter I used for another application?

Yes. However, read the HOME application and instructions carefully to ensure that the letter complies with the HOME instructions and addresses all of the HOME-required issues.

Can a commitment letter's loan term exceed the HOME –required period of affordability?

Yes.

Is there a required percentage of completion for plans and specifications at the time of application?

No. However, for Attachment 10, Rental New Construction, plans and specs that are ready to be submitted to the building department receive the most points in this area. Plans and specs that are not as ready receive fewer points. The requirements are different for Attachments 11 and 12. Plans and specifications are not a rating factor in these attachments, but the cost estimate for rehabilitation must be based upon an inspection of at least 50% of the units.

How many years should the multi-year pro-forma required for the application represent?

For rental new construction projects, the proforma must be 20 years, regardless if the applicant is a State Recipient or a CHDO. The required term for rental rehabilitation projects is 5, 10, or 15 years depending on the amount of HOME funds per HOME unit as identified in the HOME Final Rule 92.252(e).